



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 09E of 09

 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/08/2006 (Per: GMM)





Appendix A ... Part 05 of 12

 The 2005 drafting file for LRB 05-4299

has been transferred to the drafting file for

2007 LRB 07-0174

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4299/7

GMM.....

Soon in 3/15

MK (PI)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS: Pls chg all
NOTES TO ****NOTES.

LPS: Pls. -
PWA
where indicated

GenCat

1 AN ACT ...; relating to: Indian child welfare. ✓

Analysis by the Legislative Reference Bureau

Introduction

Under current law, the federal Indian Child Welfare Act (ICWA), which governs jurisdiction over child custody proceedings involving an Indian child and provides certain minimum standards for those proceedings, supercedes the provisions of the Children's Code and the Juvenile Justice Code in any child custody proceeding governed by ICWA. For purposes of ICWA, "child custody proceeding" means any of the following:

1. Any action removing an Indian child from his or her parent or Indian custodian, that is, an Indian person who has legal custody of an Indian child under tribal law or custom or state law or to whom temporary physical custody of an Indian child has been transferred by the Indian child's parent, for temporary placement in a foster home or institution, in which the parent or Indian custodian cannot have the Indian child removed on demand, but not including a placement that is based on an act that would be a crime if committed by an adult (out-of-home care placement). ✓
2. A termination of parental rights (TPR) proceeding. ✓
3. A temporary placement of an Indian child in a foster home or institution after a TPR, but prior to or in lieu of an adoptive placement (preadoptive placement). ✓
4. An adoptive placement (~~collectively "Indian child custody proceeding"~~). ✓

This bill incorporates the jurisdictional provisions of ICWA and the minimum standards for Indian child custody proceedings established by ICWA into the provisions of the Children's Code relating to child in need of protection or services (CHIPS), TPR, and adoption proceedings and the provisions of the Juvenile Justice

- (JIPS)
- * Code relating to juvenile in need of protection or services proceedings, other than proceedings that are based on the commission of an act that would be a crime if committed by an adult (JIPS proceedings). ✓

Jurisdiction

Under ICWA, an Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe and over an Indian child who is a ward of a tribal court, regardless of the residence or domicile of the Indian child, except when jurisdiction is otherwise vested in the state by federal law. ✓ This grant of jurisdiction, however, does not prevent the emergency removal of an Indian child who resides or is domiciled on a reservation, but who is temporarily located off the reservation, from his or her parent or Indian custodian in order to prevent imminent physical damage or harm to the Indian child. ✓

Also, under ICWA, a state court is required to transfer a proceeding involving an out-of-home care placement of, or TPR to, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe to the jurisdiction of the Indian child's tribe upon the petition of the Indian child's parent, Indian custodian, or tribe, unless a parent of the Indian child objects, the tribal court declines jurisdiction, or the state court finds good cause not to transfer the proceeding. ✓ In addition, ICWA permits an Indian child's parent, Indian custodian, or tribe to intervene at any point in an Indian child custody proceeding in state court involving the out-of-home care placement of, or TPR to, the Indian child. ✓

Finally, with respect to jurisdiction over an Indian child custody proceeding, ICWA requires a state court to decline jurisdiction and to forthwith return an Indian child to his or her parent or Indian custodian, unless returning the Indian child would subject the Indian child to a substantial and immediate danger or threat of danger, when a petitioner in an Indian child custody proceeding has improperly removed the Indian child from the custody of his or her parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody. ✓

This bill incorporates those jurisdictional provisions of ICWA into the Children's Code and the Juvenile Justice Code. ✓

Involuntary out-of-home care placements and TPR proceedings

- ICWA requires a party seeking an out-of-home care placement of, or TPR to, an Indian child in an involuntary proceeding in state court to notify the Indian child's parent, Indian custodian, and tribe, by registered mail with return receipt requested, of the proceeding and of their right to intervene in the proceeding. ✓ Under ICWA, if the identity or location of the parent, Indian custodian, or tribe cannot be
- * determined, notice of the proceeding must be provided to the U.S. Secretary of the
- * Interior, who then has 15 days after receipt of the notice to provide the notice to the parent, Indian custodian, and tribe. ✓ ICWA prohibits an out-of-home care placement or TPR proceeding from being heard until at least 10 days after receipt of notice by the parent, Indian custodian, or tribe or by the U.S. Secretary of the Interior and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the proceeding. ✓
- ten

for the Indian child
A permanency plan

- This bill requires an Indian child's parent, Indian custodian, and tribe to be notified, in the manner specified in ICWA, of a CHIPS, JIPS, or TPR proceeding involving the Indian child, of a change in placement in a CHIPS or JIPS proceeding involving the Indian child, or of a hearing to determine or review the permanency plan, which is a plan designed to ensure that a child is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing
- * long-term stability for the Indian child. The bill prohibits a CHIPS, JIPS, or TPR hearing, a change in placement hearing, or a permanency plan determination or
 - * review hearing from being held until at least 10 days after receipt of notice of the hearing by the parent, Indian custodian, or tribe and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the hearing. ✓

Under ICWA, a parent or Indian custodian who is indigent has the right to court-appointed counsel in any proceeding involving the removal of an Indian child from his or her home, placement of an Indian child in an out-of-home care placement, or TPR to an Indian child. This bill incorporates that right into the Children's Code and the Juvenile Justice Code. ✓

ICWA also requires a party seeking to effect an out-of-home care placement of, or a TPR to, an Indian child to satisfy the state court that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

ICWA also prohibits a state court from ordering an out-of-home care placement of an Indian child in the absence of a determination, supported by clear and convincing evidence, including the testimony qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child, and prohibits a state court from ordering a TPR to an Indian child in the absence of a determination, supported by evidence beyond a reasonable doubt, including the testimony qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. ← keep an Indian

- * This bill requires a CHIPS or JIPS order or a change in placement order placing a child outside the home to include a finding, supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and a finding, supported by clear and convincing evidence that the agency primarily responsible for providing services to the Indian child has made active efforts to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. The bill also requires the court assigned to exercise jurisdiction under the Children's Code and the
- * Juvenile Justice Code (juvenile court) or jury in a TPR proceeding to determine if it is proved beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and if it is proved beyond a reasonable doubt that active efforts have been made to prevent the breakup of the Indian family and that those efforts have proved

in the case of out-of-home care placement and in the case of TPR

unsuccessful. ✓ In addition, the bill requires an order extending a CHIPS or JIPS dispositional order for an Indian child who is placed outside the home and a summary of a permanency plan review for such a child to include a determination as to whether active efforts were made to prevent the breakup of the Indian family and as to whether those efforts have proved unsuccessful. ✓

ICWA further requires an Indian child who is accepted for an out-of-home care placement or a preadoptive placement to be placed in the least restrictive setting which most approximates a family and in which the Indian child's special needs, if any, may be met and requires an Indian child to be placed within reasonable proximity to his or her home, taking into account any special needs of the Indian child. ✓ ICWA also requires that a preference be given, in the absence of good cause to the contrary, to a placement with a member of the Indian child's extended family, a foster home licensed, approved, or specified by the Indian child's tribe, an Indian foster home licensed or approved by an authorized non-Indian licensing authority, or an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs, unless the Indian child's tribe has established a different order of preference. ✓ ICWA also specifies that the standards to be applied in meeting the placement preference requirements of ICWA are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parent or extended family maintains social and cultural ties. ✓

This bill requires the juvenile court, in placing or changing the placement of an Indian child who is in need of protection or services or in placing an Indian child in a preadoptive placement following a TPR, to designate one of the following as the placement for the Indian child, in the order of preference listed, unless the Indian child's tribe has established a different order of preference or good cause is shown for departing from that order of preference: ✓

1. The home of an extended family member of the Indian child. ✓
2. A foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe. ✓
3. An Indian foster home or treatment foster home licensed or approved by the Department of Health and Family Services (DHFS), a county department of human services or social services (county department), or a child welfare agency. ✓
4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child. ✓

The bill requires the juvenile court to designate a placement that is the least restrictive setting that most approximates a family, that meets the Indian child's special needs, if any, and that is within reasonable proximity to the Indian child's home, taking into account the Indian child's special needs. The bill also specifies that the standards to be applied in meeting the placement preference requirements of the bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties. ✓

Finally, with respect to involuntary out-of-home care placements and TPR proceedings, ICWA permits the Indian child or the Indian child's parent, Indian custodian, or tribe to petition any court of competent jurisdiction to invalidate an out-of-home care placement or TPR upon a showing that the placement or TPR violated any provision of ICWA relating to out-of-home care placements or TPR. ✓

This bill permits any Indian child who is the subject of an out-of-home care placement or of a TPR proceeding, any parent or Indian custodian of that Indian child, or the Indian child's tribe to move the juvenile court to invalidate that out-of-home care placement or TPR on the grounds that the out-of-home care placement was made or the TPR was ordered in violation of any provision of ICWA relating to out-of-home care placements or TPR. ✓ If the juvenile court finds that those grounds exist and if the Indian child has not been adopted, the juvenile court must invalidate the out-of-home care placement or TPR and order the Indian child to be returned to his or her parent or Indian custodian. ✓ If the Indian child has been adopted, the parent or Indian custodian may petition the juvenile court for return of custody of the Indian child. ✓

Voluntary TPR

Under ICWA, the consent of a parent to a TPR to an Indian child is not valid unless executed in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the judge's certification that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent. ✓ ICWA also requires the court to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. ✓ Under ICWA, any consent given prior to, or within 10 days after, the birth of an Indian child, is not valid. ✓ ICWA permits a parent to withdraw his or her consent to a TPR for any reason prior to the entry of a final decree of TPR, and the Indian child must be returned to the parent. ✓ After the entry of a final decree of adoption of an Indian child, the Indian child's parent may withdraw consent to the TPR to the Indian child on the grounds of fraud or duress and may petition the court to vacate the decree. ✓ If the court finds that the consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to his or her parent, except that no adoption that has been effective for at least two years may be invalidated by the withdrawal of consent on the grounds of fraud or duress. ✓

This bill permits a judge of the juvenile court to accept a voluntary consent to TPR to an Indian child only if the consent is executed in writing, recorded before the judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. ✓ The bill also requires the judge to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. ✓ Under the bill, any consent to TPR given prior to or within ten (10) days after the birth of an Indian child is not valid. ✓

The bill permits a parent who has consented to TPR to an Indian child to withdraw the consent for any reason at any time prior to the entry of a final order of TPR, and the Indian child must be returned to his or her parent. ✓ After the entry

two
of a final TPR order, a parent who has consented to TPR to an Indian child or who did not contest a petition initiating involuntary TPR proceedings may withdraw that consent and move the juvenile court for relief from the order on the grounds that the consent was obtained through fraud, misrepresentation, or duress, if the motion is filed within 2 years after the entry of an order granting adoption of the Indian child. ✓
If the juvenile court finds that the consent was obtained through fraud, misrepresentation, or duress, the juvenile court must vacate the TPR order and, if applicable, the order granting adoption. ✓

Adoption

ICWA requires, when an Indian child is placed for adoption, that a preference be given, in the absence of good cause to the contrary, to a placement with a member of the Indian child's extended family, other members of the Indian child's tribe, or other Indian families, unless the Indian child's tribe has established a different order of preference. ✓ ICWA also specifies that the standards to be applied in meeting the placement preference requirements of ICWA are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parent or extended family maintains social and cultural ties. ✓

This bill requires DHFS, a county department, or a child welfare agency, in placing an Indian child for adoption or in investigating or making a recommendation regarding the adoptive placement of an Indian child, and a juvenile court, in determining whether an adoptive placement is in the best interests of an Indian child, to give preference to a placement with one of the following, in the order of preference listed, unless the Indian child's tribe has established a different order of preference or good cause is shown for departing from that order of preference:

1. An extended family member of the Indian child. ✓
2. Another member of the Indian child's tribe. ✓
- the 3. Another Indian family. ✓

* The bill also specifies that the standards to be applied in meeting the placement preference requirements of bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties. ✓

ICWA permits a biological parent or former Indian custodian of an Indian child who has been adopted to petition for return of custody of the Indian child when a final decree of adoption of the Indian child has been vacated or set aside or when the adoptive parents of the Indian child voluntarily consent to TPR to the Indian child. Under ICWA, the state court must grant the petition unless there is a showing that return of custody is not in the best interests of the Indian child. ✓

This bill requires a juvenile court that vacates or sets aside a final order granting adoption of an Indian child or that grants an order voluntarily terminating parental rights to an Indian child of all adoptive parents of the Indian child to notify the Indian child's former parent and former Indian custodian, and the former parent or former Indian custodian may petition for the return of custody of the Indian child. ✓

The juvenile court must grant the petition unless there is a showing of good cause that return of custody is not in the best interest of the Indian child. ✓

Finally, ICWA requires a state court that enters a final decree of adoption of an Indian child to: 1) provide the U.S. Secretary of the Interior with a copy of the decree, together with such other information as may be necessary to show the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's biological parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency having files or information relating to the adoptive placement of the Indian child; and 2) inform an Indian individual who has reached the age of 18 years and who was the subject of an adoptive placement, upon application, of the tribal affiliation, if any, of the individual's biological parents and with such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. ✓

This bill requires a juvenile court that enters an order granting adoption of an Indian child to: 1) provide the U.S. Secretary of the Interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's birth parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child; and 2) provide an Indian adoptee who is 18 years of age or older, upon request, with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation. ✓

Insert
7-17

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 48.01 (2) (intro.) of the statutes is amended to read:
- 2 48.01 (2) (intro.) In Indian child custody proceedings involving an American
- 3 ~~Indian child~~, the best interests of the Indian child shall be determined consistent
- 4 with the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC 1901 to
- 5 1963. ~~In this subsection, "American Indian child" means any unmarried person who~~
- 6 ~~is under 18 years of age and who is one~~ It is the policy of this state to do all of the
- 7 following:

History: 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77, 275; 1997 a. 237, 292; 1999 a. 32.

- 8 SECTION 2. 48.01 (2) (a) of the statutes is amended to read:

1 48.01 (2) (a) ~~A member of an~~ Cooperate fully with Indian tribe, ~~as defined in~~
2 ~~25 USC 1903 (8) tribes in order to ensure that the federal Indian Child Welfare Act~~
3 is enforced in this state. ✓

History: 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77, 275; 1997 a. 237, 292; 1999 a. 32.

4 **SECTION 3.** 48.01 (2) (b) of the statutes is amended to read:

5 48.01 (2) (b) ~~Eligible for membership in an~~ Protect the best interests of Indian
6 ~~tribe and is the biological child of a member of an~~ children and to promote the
7 stability and security of Indian tribes and families by the establishment of minimum
8 standards for the removal of Indian children from their families and the placement
9 of those children in foster or adoptive homes that will reflect the unique value of
10 Indian tribe culture. ✓

History: 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77, 275; 1997 a. 237, 292; 1999 a. 32.

NOTE: The amendment of s. 48.01 (2) includes the declaration of policy found in 25
USC 1902 and 43-1502, Nebraska statutes. ✓

11 **SECTION 4.** 48.02 (2) of the statutes is amended to read:

12 48.02 (2) "Child" ^{strike} ~~when used without further qualification~~ ³⁻¹¹ ✓ means a person who
13 is less than 18 years of age, except that for purposes of investigating or prosecuting
14 a person who is alleged to have violated a state or federal criminal law or any civil
15 law or municipal ordinance, "child" does not include a person who has attained 17
16 years of age.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985
a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss.
2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

17 **SECTION 5.** 48.02 (5k) of the statutes is created to read:

18 48.02 (5k) "Extended family member" ³⁻¹² ~~with respect to an Indian child~~ ✓ means
19 a person who is defined as a member of an Indian child's extended family by the law
20 or custom of the Indian child's tribe or, in the absence of such a law or custom, a
21 person who has attained the age of 18 years and who is the Indian child's

1 grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
2 nephew, first cousin, 2nd cousin, or stepparent. ✓

3 **SECTION 6.** 48.02 (8d) of the statutes is created to read:

4 48.02 (8d) "Indian" means any person who is a member of an Indian tribe or
5 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
6 1606. ✓

7 **SECTION 7.** 48.02 (8g) of the statutes is created to read:

8 48.02 (8g) "Indian child" means an unmarried person who is under 18 years
9 of age and who is one of the following: ✓

10 (a) A member of an Indian tribe. ✓

11 (b) Eligible for membership in an Indian tribe and is the biological child of a
12 member of an Indian tribe. ✓

13 **SECTION 8.** 48.02 (8j) of the statutes is created to read:

14 48.02 (8j) "Indian child custody proceeding" means a proceeding governed by
15 the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the
16 following may occur:

17 (a) An adoptive placement, which means the permanent placement of an
18 Indian child for adoption. ✓

19 (b) An out-of-home care placement, which means the removal of an Indian
20 child from his or her parent or Indian custodian for temporary placement in a foster
21 home, treatment foster home, group home, or residential care center for children and
22 youth or in the home of a guardian, from which placement the parent or Indian
23 custodian cannot have the child returned upon demand. ✓

24 (c) A preadoptive placement, which means the temporary placement of an ✓
25 Indian child in a foster home, treatment foster home, group home, or residential care

1 center for children and youth or in the home of a guardian after a termination of
2 parental rights but prior to or in lieu of an adoptive placement. ✓

3 (d) A termination of parental rights, as defined in s. 48.40 (2), to an Indian child. ✓

4 **SECTION 9.** 48.02 (8m) of the statutes is created to read:

5 48.02 (8m) "Indian child's tribe" means one of the following:

6 (a) The Indian tribe in which an Indian child is a member or eligible for
7 membership. ✓

8 (b) In the case of an Indian child who is a member of or eligible for membership
9 in more than one tribe, the Indian tribe with which the Indian child has the more
10 significant contacts. ✓

11 **SECTION 10.** 48.02 (8p) of the statutes is created to read:

12 48.02 (8p) "Indian custodian" means an Indian person who has legal custody
13 of an Indian child under tribal law or custom or under state law or to whom
14 temporary physical care, custody, and control has been transferred by the parent of
15 the child. ✓

16 **SECTION 11.** 48.02 (8r) of the statutes is created to read:

17 48.02 (8r) "Indian tribe" means any Indian tribe, band, nation, or other
18 organized group or community of Indians that is recognized as eligible for the
19 services provided to Indians by the U.S. secretary of the interior because of Indian
20 status, including any Alaska native village, as defined in 43 USC 1602 (c). ✓

21 **SECTION 12.** 48.02 (13) of the statutes is amended to read:

22 48.02 (13) "Parent" means either a biological parent, a husband who has
23 consented to the artificial insemination of his wife under s. 891.40, or a parent by
24 adoption, including, in the case of an Indian child, an adoption under tribal law or
25 custom. ✓ If the child is a nonmarital child who is not adopted or whose parents do not

1 subsequently intermarry under s. 767.60, "parent" includes a person acknowledged
2 under s. 767.62 (1) or a substantially similar law of another state or adjudicated to
3 be the biological father. "Parent" does not include any person whose parental rights
4 have been terminated.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

NOTE: The DHFS draft creates s. 48.40 (1g) to define "Indian parent." Actually, ICWA applies to any parent, not just an Indian parent, of an Indian child. See 25 USC 1903 (9). Accordingly, s. 48.40 (1g) is not included in this draft.

PSRW Act

5 **SECTION 13.** 48.02 (15) of the statutes, as affected by 2005 Wisconsin Act

6 (Senate Bill 284), is amended to read:

7 48.02 (15) "Relative" means a parent, stepparent, brother, sister, stepbrother,
8 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd
9 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
10 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
11 marriage, or legal adoption, or the spouse of any person named in this subsection,
12 even if the marriage is terminated by death or divorce. "Relative" also includes, in
13 the case of an Indian child, an extended family member, whether by blood, marriage,
14 or adoption, including adoption under tribal law or custom. ✓

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

15 **SECTION 14.** 48.02 (15c) of the statutes is created to read:

16 48.02 (15c) "Reservation" means Indian country, as defined in 18 USC 1151,
17 or any land not covered under that section to which the title is either held by the
18 United States in trust for the benefit of an Indian tribe or individual or held by an
19 Indian tribe or individual, subject to a restriction by the United States against
20 alienation. ✓

21 **SECTION 15.** 48.02 (18j) of the statutes is created to read:

1 48.02 (18j) “Tribal court” means a court that has jurisdiction over Indian child
2 custody proceedings, and that is either a court of Indian offenses or a court
3 established and operated under the code or custom of an Indian tribe, or any other
4 administrative body of an Indian tribe that is vested with authority over Indian child
5 custody proceedings. ✓

6 **SECTION 16.** 48.028 of the statutes is amended to read:

7 **48.028 Custody of Indian children.** The ~~Indian child welfare act~~ [✓] federal
8 Indian Child Welfare Act, [✓] 25 USC 1911 to 1963, supersedes ~~the provisions~~ [✓] of this
9 chapter in any Indian [✓] child custody proceeding governed by that act, except that in
10 any case in which this chapter provides a higher standard of protection for the rights
11 of an Indian child’s parent or Indian custodian than the rights provided under that
12 act, the court shall apply the standard under this chapter. ✓

History: 1981 c. 81.

NOTE: In reviewing this [“]Section[”], please note all of the following:

1. The ~~Section~~ ^{CS} incorporates the higher standard language of 25 USC
1921. See also ss. 822.015 and 938.028, stats., as affected by this draft. ✓

2. The DHFS draft incorporates the jurisdictional provisions of ICWA
here. This draft incorporates those provisions in subch. III of ch. 48, which is where the
jurisdictional provisions of that chapter are found. ✓

13 **SECTION 17.** 48.13 (intro.) of the statutes is amended to read:

14 **48.13 Jurisdiction over children alleged to be in need of protection or**
15 **services.** (intro.) The Except as provided in s. 48.155, [✓] the court has exclusive
16 original jurisdiction over a child alleged to be in need of protection or services which
17 can be ordered by the court, and: ✓

History: 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27, 363, 395, 474; 1995 a. 77, 275; 1997 a. 80; 2001 a. 2.

18 **SECTION 18.** 48.14 (intro.) of the statutes is amended to read:

19 **48.14 Jurisdiction over other matters relating to children.** (intro.) The
20 Except as provided in s. 48.155, [✓] the court has exclusive jurisdiction over:

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318;
1995 a. 38, 77, 275; 1997 a. 164, 292, 334.

1 **SECTION 19.** 48.14 (12) of the statutes is created to read:

2 48.14 (12) Proceedings under s. 48.47 (3) for the return of custody of an Indian
3 child to his or her former parent or former Indian custodian following a vacation or
4 setting aside of an order granting adoption of the Indian child or following an order
5 voluntarily terminating parental rights to an Indian child of all adoptive parents of
6 the Indian child. ✓

7 **SECTION 20.** 48.15 of the statutes is amended to read:

8 **48.15 Jurisdiction of other courts to determine legal custody.** Nothing
9 contained in ss. 48.13, 48.133 and 48.14 Except as provided in s. 48.155, nothing in
10 this chapter deprives ~~other courts~~ another court ✓ of the right to determine the legal
11 custody of ~~children~~ a child ✓ by habeas corpus or to determine the legal custody or
12 guardianship of ~~children~~ a child ✓ if the legal custody or guardianship is incidental to
13 the determination of ~~causes~~ an action ✓ pending in ~~the other courts.~~ But that court, ✓
14 Except as provided in s. 48.155, ✓ the jurisdiction of the court assigned to exercise
15 jurisdiction under this chapter and ch. 938 is paramount in all cases involving
16 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn
17 children and their expectant mothers alleged to come within the provisions of ss.
18 48.133 and 48.14 (5). ✓

History: 1977 c. 449; 1981 c. 289; 1995 a. 77; 1997 a. 292.

19 **SECTION 21.** 48.155 of the statutes is created to read: ✓

20 **48.155 Jurisdiction over Indian children.** (1) EXCLUSIVE JURISDICTION. (a)

21 An Indian tribe shall have exclusive jurisdiction over any Indian child custody
22 proceeding involving an Indian child who resides or is domiciled within the
23 reservation of the tribe, except when that jurisdiction is otherwise vested in the state
24 by federal law and except as provided in par. (b). If an Indian child is a ward of a tribal

1 court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence
2 or domicile of the child. ✓

3 (b) Paragraph (a) does not prevent an Indian child who resides or is domiciled
4 within a reservation, but who is temporarily located off the reservation, from being
5 taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent
6 physical harm or damage to the Indian child. The person taking the Indian child into
7 custody or the intake worker shall immediately release the Indian child from custody
8 upon determining that continuing the Indian child in custody is no longer necessary
9 to prevent imminent physical damage or harm to the Indian child. ✓

10 (2) TRANSFER OF PROCEEDINGS TO TRIBE. In any Indian child custody proceeding
11 under this chapter involving an out-of-home placement of, or termination of
12 parental rights to, an Indian child who is not residing or domiciled within the
13 reservation of the Indian child's tribe, the court assigned to exercise jurisdiction
14 under this chapter shall, upon the petition of the Indian child's parent, Indian
15 custodian, or ~~tribe~~, transfer the proceeding to the jurisdiction of the tribe unless any
16 of the following applies:

17 (a) A parent of the Indian child objects to the transfer. ✓

18 (b) The tribal court of the Indian's child's tribe declines jurisdiction.

19 (c) The court determines that good cause exists to deny the transfer. ✓

20 (3) DECLINATION OF JURISDICTION. If the court determines that the petitioner in
21 an Indian child custody proceeding has improperly removed ^{or the} an Indian child from the
22 custody of his or her parent or Indian custodian or has improperly retained custody
23 of the Indian child after a visit or other temporary relinquishment of custody, the
24 court shall decline jurisdiction over the petition and immediately return the Indian
25 child to the custody of the parent or Indian custodian, unless the court determines

1 that returning the Indian child to his or her parent or Indian custodian would subject
2 the Indian child to substantial and immediate danger or the threat of that danger. ✓

3 (4) INTERVENTION. AN Indian child's Indian custodian or tribe may intervene
4 at any point in an Indian child custody proceeding under this chapter involving an
5 out-of-home care placement of, or termination of parental rights to, the Indian child. ✓

6 (5) FULL FAITH AND CREDIT. The court shall give full faith and credit to the public
7 acts, records, and judicial proceedings of any Indian tribe that are applicable to an
8 Indian child custody proceeding to the same extent that the state gives full faith and
9 credit to the public acts, records, and judicial proceedings of any other governmental
10 entity. ✓

* NOTE: In reviewing this Section, please note all of the following:

1. Because 25 USC 1922 governs emergency removal of a child domiciled on a reservation, this draft incorporates that provision into s. 48.155 (1), which relates to jurisdiction over such a child. ✓

2. 25 USC 1911 (b) and (c), relating to transfer of proceedings and intervention, only apply to out-of-home care placements and termination of parental rights (TPR) proceedings, not to adoptive placements. Accordingly, the reference in the DHFS draft to any Indian child custody proceeding is too broad. ✓

3. Also, with respect to transfer of jurisdiction, the language of the U.S. Department of Interior Guidelines is clearer than 25 USC 1911 (b), so this draft uses the Guidelines language. ✓

4. 25 USC 1920 relates to declination of jurisdiction. Therefore that section is incorporated into the section on jurisdiction. ✓

5. Do we need s. 48.155 (5) relating to full faith and credit? Full faith and credit is already covered in s. 806.245, stats. ✓

11 **SECTION 22.** 48.19 (2) of the statutes is amended to read:

12 48.19 (2) When a child is taken into physical custody ~~as provided in~~ under this
13 section, the person taking the child into custody shall immediately attempt to notify
14 the parent, guardian ~~and~~, legal custodian, and Indian custodian of the child by the
15 most practical means. The person taking the child into custody shall continue such
16 attempt until the parent, guardian ~~and~~, legal custodian, and Indian custodian of the

1 child are notified, or the child is delivered to an intake worker under s. 48.20 (3),
2 whichever occurs first. If the child is delivered to the intake worker before the
3 parent, guardian ~~and~~, legal custodian, and Indian custodian are notified, the intake
4 worker, or another person at his or her direction, shall continue the attempt to notify
5 until the parent, guardian ~~and~~, legal custodian, and Indian custodian of the child are
6 notified.

History: 1977 c. 354, 449; 1979 c. 300; 1985 a. 176; 1989 a. 31, 56, 107; 1993 a. 16, 56, 377, 490; 1995 a. 27, 77; 1997 a. 292.

7 **SECTION 23.** 48.195 (2) (d) 7. of the statutes is amended to read:

8 48.195 (2) (d) 7. A tribal court, or other adjudicative body authorized by an
9 ~~American~~ Indian tribe ~~or band~~ to perform child welfare functions, that is exercising
10 jurisdiction over proceedings relating to the child, an attorney representing the
11 interests of the ~~American~~ Indian tribe ~~or band~~ in those proceedings, or an attorney
12 representing the interests of the child in those proceedings. ✓

History: 2001 a. 2.

13 **SECTION 24.** 48.20 (2) (ag) of the statutes is amended to read:

14 48.20 (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into
15 custody shall make every effort to release the child immediately to the child's parent,
16 guardian ~~or~~, legal custodian, or Indian custodian. ✓

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

17 **SECTION 25.** 48.20 (2) (b) of the statutes is amended to read:

18 48.20 (2) (b) If the child's parent, guardian ~~or~~, legal custodian, or Indian
19 custodian is unavailable, unwilling, ✓ or unable to provide supervision for the child,
20 the person who took the child into custody may release the child to a responsible
21 adult after counseling or warning the child as may be appropriate.

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

22 **SECTION 26.** 48.20 (3) of the statutes is amended to read:

48.20 (3) If the child is released under sub. (2) (b) to (d), the person who took the child into custody shall immediately notify the child's parent, guardian and, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the child was released. If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2), and. The person who took the child into custody shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give any child 12 years of age or older a copy of the statement in addition to giving a copy to the intake worker. When and to any child 12 years of age or older. If the intake interview is not done in person, the report may be read to the intake worker. ✓

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

SECTION 27. 48.20 (7) (c) (intro.) of the statutes is amended to read:

48.20 (7) (c) (intro.) The intake worker may release the child as follows:

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

SECTION 28. 48.20 (7) (c) 1. of the statutes is amended to read:

48.20 (7) (c) 1. To a parent, guardian or, legal custodian, or Indian custodian, or, to a responsible adult if the parent, guardian or, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the child, release the child to a responsible adult, counseling or warning the child as may be appropriate; or, if a the child is 15 years of age or older, release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or.

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

SECTION 29. 48.20 (7) (d) of the statutes is amended to read:

1 48.20 (7) (d) If the child is released from custody, the intake worker shall
2 immediately notify the child's parent, guardian ~~and~~, legal custodian, [✓] and Indian
3 custodian of the time and circumstances of the release and the person, if any, to whom
4 the child was released. [✓]

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

5 **SECTION 30.** 48.20 (8) of the statutes is renumbered 48.20 (8) (a) and amended
6 to read:

7 48.20 (8) (a) If a child is held in custody, the intake worker shall notify the
8 child's parent, guardian ~~and~~, legal custodian, [✓] and Indian custodian [✓] of the reasons for
9 holding the child in custody and of the child's whereabouts unless there is reason to
10 believe that notice would present imminent danger to the child. The parent,
11 guardian ~~and~~, [✓] legal custodian, [✓] and Indian custodian shall also be notified of the time
12 and place of the detention hearing required under s. 48.21, the nature and possible
13 consequences of that hearing, the right to counsel under s. 48.23 regardless of ability [✓]
14 to pay, and the right to present and cross-examine witnesses at the hearing. If the
15 parent, guardian ~~or~~, legal custodian, [✓] or Indian custodian is not immediately
16 available, the intake worker or another person designated by the court shall provide
17 notice as soon as possible. When the child is 12 years of age or older, the child shall
18 receive the same notice about the detention hearing as the parent, guardian ~~or~~, [✓] legal
19 custodian, [✓] or Indian custodian. The intake worker shall notify both the child and the
20 child's parent, guardian ~~or~~, legal custodian. ~~When~~ [✓] or Indian custodian.

21 (b) [✓] If the child is an expectant mother who has been taken into custody under
22 s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad
23 litem, shall receive the same notice about the whereabouts of the child expectant
24 mother, about the reasons for holding the child expectant mother in custody and

1 about the detention hearing as the child expectant mother and her parent, guardian
2 ~~or~~, legal custodian, or Indian custodian. The intake worker shall notify the child
3 expectant mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian and
4 the unborn child, by the unborn child's guardian ad litem.

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

NOTE: In *Joni B. v. State*, 202 Wis. 2d 1 (1996), the Supreme Court held that the legislature's prohibition against appointing counsel for any party other than the child in a child in need of protection or services (CHIPS) proceeding is unconstitutional. Accordingly, this draft amends s. 48.23 (3) and other related provisions to conform the Children's Code to *Joni B.*

5 **SECTION 31.** 48.21 (3) (am) of the statutes is amended to read:

6 48.21 (3) (am) The parent, guardian, ~~or~~, legal custodian, or Indian custodian
7 may waive his or her right to participate in the hearing under this section. After any
8 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
9 custodian, Indian custodian, or any other interested party for good cause shown.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

10 **SECTION 32.** 48.21 (3) (b) of the statutes is amended to read:

11 48.21 (3) (b) If present at the hearing, a copy of the petition or request shall be
12 given to the parent, guardian ~~or~~, legal custodian, or Indian custodian, and to the child
13 if he or she is 12 years of age or older, before the hearing begins. If the child is an
14 expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8.,
15 a copy of the petition shall also be given to the unborn child, through the unborn
16 child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall
17 be given to the child's parent, guardian ~~and~~, legal custodian, and Indian custodian,
18 to the child if he or she is 12 years of age or older and, if the child is an expectant
19 mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn
20 child, through the unborn child's guardian ad litem, ~~in accordance with~~ under s.
21 48.20 (8).

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

1 **SECTION 33.** 48.21 (3) (d) of the statutes is amended to read:

2 48.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
3 the parent, guardian ~~or~~, legal custodian shall be informed by the court, or Indian
4 custodian of the allegations that have been made or may be made, the nature and
5 possible consequences of this hearing as compared to possible future hearings, the
6 right to counsel under s. 48.23 regardless of ability to pay, the right to confront and
7 cross-examine witnesses, and the right to present witnesses.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

8 **SECTION 34.** 48.21 (3) (e) of the statutes is amended to read:

9 48.21 (3) (e) If the parent, guardian ~~or~~, legal custodian, ~~or~~ Indian custodian or
10 the child is not represented by counsel at the hearing and the child is continued in
11 custody as a result of the hearing, the parent, guardian, legal custodian, Indian
12 custodian, or child may request through counsel subsequently appointed or retained
13 or through a guardian ad litem that the order to hold the child in custody be reheard.
14 If the request is made, a rehearing shall take place as soon as possible. ~~Any~~ An order
15 to hold the child in custody shall be ~~subject to rehearing~~ reheard for good cause,
16 whether or not counsel was present.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

17 **SECTION 35.** 48.21 (5) (d) 1. of the statutes is renumbered 48.21 (5) (d) and

18 amended to read:

19 48.21 (5) (d) If the judge or circuit court commissioner finds that any of the
20 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
21 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)
22 within 30 days after the date of that finding to determine the permanency plan for
23 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~

1 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
2 ~~than 5 days before the date of the hearing.~~

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

NOTE: Rather than add even more repetitious language to chs. 48 and 938 relating to permanency plan hearings when the court finds aggravated circumstances, this draft consolidates the language of ss. 48.21 (5) (d), 48.32 (1) (c), 48.355 (2d) (c), 48.357 (2v) (c), and 48.365 (2m) (ad) into a newly-created provision, s. 48.38 (4m). ✓

3 SECTION 36. 48.21 (5) (d) 2. of the statutes is repealed. ✓ X

4 SECTION 37. 48.21 (5) (d) 3. of the statutes is repealed. ✓ X

5 SECTION 38. 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended
6 to read:

7 48.23 (2) (a) Whenever a child is alleged to be in need of protection or services ✓
8 under s. 48.13 or is the subject of a proceeding involving a contested adoption or the
9 involuntary termination of parental rights, any parent under 18 years of age who
10 appears before the court shall be represented by counsel; but no such parent may
11 waive counsel. A Except as provided in sub. (2g), ✓ a minor parent petitioning for the
12 voluntary termination of parental rights shall be represented by a guardian ad litem.

13 If a proceeding involves a contested adoption or the involuntary termination of
14 parental rights, any parent 18 years old or older who appears before the court shall
15 be represented by counsel; but the parent may waive counsel provided the court is
16 satisfied such waiver is knowingly and voluntarily made. ✓

History: 1977 c. 354, 355, 447, 449; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77; 1997 a. 292; 1999 a. 9, 149; 2001 a. 103.

17 SECTION 39. 48.23 (2) (b) of the statutes is created to read:

18 48.23 (2) (b) If a petition under s. 48.13 is contested, no child may be placed
19 outside his or her home unless the nonpetitioning parent is represented by counsel
20 at the fact-finding hearing and subsequent proceedings. ✓ If the petition is not
21 contested, the child may not be placed outside his or her home unless the
22 nonpetitioning parent is represented by counsel at the hearing at which the

1 placement is made. The parent may waive counsel if the court is satisfied that the
2 waiver is knowingly and voluntarily made and the court may place the child outside
3 the home even though the parent was not represented by counsel. ✓

NOTE: The renumbering and amendment of s. 48.23 (2) and the creation of s. 48.23
(2) (b) restores the law that existed prior to the action of the legislature that was ruled
unconstitutional in *Joni B.* ✓

4 SECTION 40. 48.23 (2g) of the statutes is created to read:

5 48.23 (2g) RIGHT OF INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO COUNSEL. ✓

6 Whenever an Indian child is the subject of a proceeding involving the removal of the
7 Indian child from his or her home, placement of the Indian child in an out-of-home
8 care placement, termination of parental rights to the Indian child, or return of
9 custody of the Indian child under s. 48.47 (3), the Indian child's parent or Indian
10 custodian, upon a determination of indigency as provided in sub. (4), shall have the
11 right to be represented by court-appointed counsel. ✓ If the court appoints counsel
12 under this subsection for a person who is not otherwise entitled to representation
13 under sub. (2), the court shall promptly notify the U.S. secretary of the interior of the
14 appointment and certify to the secretary the reasonable fees and expenses of the
15 court-appointed counsel for purposes of payment of those fees and expenses under
16 25 USC 1912 (b). ✓

17 SECTION 41. 48.23 (3) of the statutes is amended to read:

18 48.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. ^{plain} Except in proceedings under
19 s. 48.13, at At any time, upon request or on its own motion, the court may appoint
20 counsel for the child or any party, unless the child or the party has or wishes to retain
21 counsel of his or her own choosing. ~~The court may not appoint counsel for any party~~
22 ~~other than the child in a proceeding under s. 48.13.~~ ✓

NOTE: Current law, as affected by *Joni B.*, already permits the court to appoint counsel for the child in any proceeding under the Children's Code. Accordingly, no special provision needs to be made for an Indian child. ✓

History: 1977 c. 354, 355, 447, 449; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77; 1997 a. 292; 1999 a. 9, 149; 2001 a. 103.

SECTION 42. 48.23 (4) of the statutes is amended to read: ✓

48.23 (4) PROVIDING COUNSEL. ~~In any situation under this section in which~~ If ✓
a child has a right to be represented by counsel or is provided counsel at the discretion
of the court under this section ✓ and counsel is not knowingly and voluntarily waived,
the court shall refer the child to the state public defender and counsel shall be
appointed by the state public defender under s. 977.08 without a determination of
indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the
state public defender shall appoint counsel within 24 hours after that referral. Any
counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent
the child in any appeal brought under s. 809.105 unless the child requests
substitution of counsel or extenuating circumstances make it impossible for counsel
to continue to represent the child. In any situation under sub. (2), (2g) ✓, or (2m) in
which a parent 18 years of age or over or an adult expectant mother is entitled to
representation by counsel; counsel is not knowingly and voluntarily waived; and it
appears that the parent or adult expectant mother is unable to afford counsel in full,
or the parent or adult expectant mother so indicates; the court shall refer the parent
or adult expectant mother to the authority for indigency determinations specified
under s. 977.07 (1). In any other situation under this section in which a person has
a right to be represented by counsel or is provided counsel at the discretion of the
court, competent and independent counsel shall be provided and reimbursed in any
manner suitable to the court regardless of the person's ability to pay, except that the

1 court may not order a person who files a petition under s. 813.122 or 813.125 to
2 reimburse counsel for the child who is named as the respondent in that petition.

History: 1977 c. 354, 355, 447, 449; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77; 1997 a. 292; 1999 a. 9, 149; 2001 a. 103.

3 **SECTION 43.** 48.235 (4) (a) 7. of the statutes is amended to read:

4 48.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights
5 under s. 48.46 or 48.47.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395; 1995 a. 27, 275; 1997 a. 237, 292, 334; 1999 a. 149.

6 **SECTION 44.** 48.235 (4m) (a) 7. of the statutes is amended to read:

7 48.235 (4m) (a) 7. Petition for relief from a judgment terminating parental
8 rights under s. 48.46 or 48.47 after the child is born.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395; 1995 a. 27, 275; 1997 a. 237, 292, 334; 1999 a. 149.

9 **SECTION 45.** 48.243 (3) of the statutes is amended to read:

10 48.243 (3) If the child or expectant mother has not had a hearing under s. 48.21
11 or 48.213 and was not present at an intake conference under s. 48.24, the intake
12 worker shall ~~inform~~ [✓] notify the child, parent, guardian ~~and~~ [✓], legal custodian, ~~and~~ [✓]
13 Indian custodian, or expectant mother, as appropriate, of the basic rights provided
14 under this section. The notice shall be given verbally, either in person or by
15 telephone, and in writing. ~~This~~ [✓] The notice shall be given ~~so as~~ [✓] in sufficient time to
16 allow the child, parent, guardian, legal custodian, ~~Indian custodian~~ [✓], or adult
17 expectant mother ~~sufficient time~~ to prepare for the plea hearing. This subsection
18 does not apply to cases of informal disposition under s. 48.245. ✓

History: 1977 c. 354; 1979 c. 300; 1985 a. 311; 1987 a. 27; 1995 a. 27, 77; 1997 a. 35, 292.

19 **SECTION 46.** 48.255 (1) (cm) of the statutes is amended to read:

20 48.255 (1) (cm) Whether the child may be subject to the federal Indian ~~child~~ [✓]
21 ~~welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, ~~and, if the child may be subject~~ [✓]

1 to that act, the names and addresses of the child's Indian custodian, if any, and
2 Indian tribe, if known.

3 **History:** 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

3 **SECTION 47.** 48.255 (1) (g) of the statutes is created to read:

4 48.255 (1) (g) If the child is or may be an Indian child, reliable and credible
5 information showing that continued custody of the child by the child's parent or
6 Indian custodian is likely to result in serious emotional or physical damage to the
7 child and reliable and credible information showing that the person who took the
8 child into custody and the intake worker have made active efforts to prevent the
9 breakup of the Indian family and that those efforts have proved unsuccessful.

NOTE: The DHFS draft uses language borrowed from the Adoption and Safe Families Act (ASFA) i.e., "continued placement in the home" and "efforts to prevent removal from the home." ICWA, however, refers to "continued custody by the parent or Indian custodian" and "efforts to prevent the breakup of the Indian family." This draft uses the ICWA language.

10 **SECTION 48.** 48.255 (1m) (d) of the statutes is amended to read:

11 48.255 (1m) (d) Whether the unborn child, when born, may be subject to the
12 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the unborn child may
13 be subject to that act, the name and address of the Indian tribe in which the unborn
14 child may be eligible for membership when born, if known.

15 **History:** 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

15 **SECTION 49.** 48.255 (1m) (g) of the statutes is created to read:

16 48.255 (1m) (g) If the expectant mother is or may be an Indian child, reliable
17 and credible information showing that continued custody of the child expectant
18 mother by her parent or Indian custodian is likely to result in serious emotional or
19 physical damage to the child expectant mother and reliable and credible information
20 showing that the person who took the child expectant mother into custody and the

1 intake worker have made active efforts to prevent the breakup of the Indian family
2 and that those efforts have proved unsuccessful. ✓

3 **SECTION 50.** 48.255 (2) of the statutes is amended to read: ✓ ✓

4 48.255 (2) If any of the facts required under sub. (1) (a) to (cm) and, (f), and (g)
5 or (1m) (a) to (d) and, (f), and (g) are not known or cannot be ascertained by the
6 petitioner, the petition shall so state. ✓

7 **History:** 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

8 **SECTION 51.** 48.255 (4) of the statutes is amended to read:

9 48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the
10 child is 12 years of age or over and to the parents, guardian, legal custodian and
11 physical custodian. A copy of a petition under sub. (1m) shall be given to the child
12 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian
13 and physical custodian and the unborn child by the unborn child's guardian ad litem
14 or to the adult expectant mother, the unborn child through the unborn child's
15 guardian ad litem and the physical custodian of the expectant mother, if any. ~~A~~ If
16 the child is an Indian child or the unborn child may be an Indian child when born, ✓
17 a copy of a petition under sub. (1) or (1m) shall also be given to the tribe or band with
18 which the child is affiliated or Indian child's Indian custodian and tribe or the Indian
19 tribe with which the unborn child may be eligible for affiliation membership when
20 born, if the child is an Indian child or the unborn child may be an Indian child when
born. ✓

21 **History:** 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

22 **SECTION 52.** 48.27 (3) (a) 1. of the statutes is amended to read:

23 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
24 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
who is a child, the court shall also notify, under s. 48.273, the child, any parent,

1 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
2 or other physical custodian described in s. 48.62 (2) of the child, the unborn child by
3 the unborn child's guardian ad litem, if applicable, and any person specified in par.
4 (b), (d), or (e), if applicable, of all hearings involving the child except hearings on
5 motions for which notice need only must be provided only to the child and his or her
6 counsel. ~~When~~ If parents who are entitled to notice have the same place of residence,
7 notice to one ~~shall constitute~~ constitutes notice to the other. The first notice to any
8 interested party, foster parent, treatment foster parent, or other physical custodian
9 described in s. 48.62 (2) shall be ~~written~~ in writing and may have a copy of the petition
10 attached to it. ~~Thereafter, notice of~~ Notices of subsequent hearings may be given by
11 telephone at least 72 hours before the time of the hearing. The person giving
12 telephone notice shall place in the case file a signed statement of the time notice was
13 given and the person to whom he or she spoke.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 Wis. 2d xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275; 1997 a. 237, 292; 1999 a. 32, 149.

14 **SECTION 53.** 48.27 (3) (d) of the statutes is amended to read:

15 48.27 (3) (d) If the petition that was filed relates to facts concerning a situation
16 under s. 48.13 involving an Indian child or a situation under s. 48.133 concerning
17 involving an unborn child who, when born, will be an Indian child, the court shall
18 notify, under s. 48.273, the Indian child's Indian custodian and tribe or the Indian
19 tribe or band with which the unborn child will be affiliated may be eligible for
20 membership when born and that Indian custodian or tribe or band may, at the court's
21 discretion, intervene at any point in the proceeding before the unborn child is born.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 Wis. 2d xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275; 1997 a. 237, 292; 1999 a. 32, 149.

22 **SECTION 54.** 48.27 (4) (a) 2. of the statutes is amended to read:

1 48.27 (4) (a) 2. Advise the child and any party, if applicable, of his or her right
2 to legal counsel regardless of ability to pay.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 Wis. 2d xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275; 1997 a. 237, 292; 1999 a. 32, 149.

3 **SECTION 55.** 48.273 (1) of the statutes is renumbered 48.273 (1) (a) and
4 amended to read:

5 48.273 (1) (a) Service of summons or notice required by s. 48.27 may be made
6 by mailing a copy ~~thereof~~ of the summons and notice to the persons person
7 summoned or notified. ~~If~~ Except as provided in par. (b), if

8 (ar) ~~If~~ the persons fail person fails to appear at the hearing or otherwise to
9 acknowledge service, a continuance shall be granted, ~~except where the court~~ strike
10 ~~determines otherwise because the child is in secure custody as provided under par.~~

11 ~~and~~ delete strike comma and service shall be made personally by delivering to the persons person a copy
12 of the summons or notice; except that if the court is ~~satisfied~~ determines that it is
13 impracticable to serve the summons or notice personally, it the court may ~~make an~~
14 order ~~providing for the service of the summons or notice~~ by certified mail addressed
15 to the last-known ~~addresses~~ address of the persons person.

16 (b) The court may refuse to grant a continuance when the child is being held
17 in secure custody, but ~~in such a case the court~~ if the court so refuses, the court shall
18 order that service of notice of the next hearing be made personally or by certified mail
19 to the last-known address of the person who failed to appear at the hearing.

20 (c) Personal service shall be made at least 72 hours before ~~the time of the~~
21 hearing. Mail shall be sent at least 7 days before ~~the time of the hearing~~, except
22 where as follows:

1 1. When the petition is filed under s. 48.13 and the person to be notified lives
2 outside the state, ~~in which case~~ the mail shall be sent at least 14 days before the time
3 of the hearing.

History: 1977 c. 354; 1979 c. 300; 1991 a. 263; 1993 a. 98; 1995 a. 77.

4 **SECTION 56.** 48.273 (1) (ag) of the statutes is created to read:

5 48.273 (1) (ag) Service of summons or notice required by s. 48.27 to an Indian
6 child's parent, Indian custodian, or tribe, or to the Indian tribe in which an unborn
7 child who may be an Indian child when born may be eligible for membership when
8 born, shall be made by mailing by registered mail, return receipt requested, a copy
9 of the summons or notice, together with notice of the person's right to intervene in
10 the proceeding, to the person summoned or notified or, if the identity or location of
11 the Indian child's parent, Indian custodian, or tribe cannot be determined, to the U.
12 S. secretary of the interior. As provided in 25 USC 1912 (a), the U.S. secretary of
13 interior shall have 15 days after receipt of the summons or notice to provide the
14 requisite notice to the Indian child's parent, Indian custodian, and tribe.

15 **SECTION 57.** 48.273 (1) (c) 2. of the statutes is created to read:

16 48.273 (1) (c) 2. When a petition under s. 48.13 involves an Indian child and
17 the person to be notified is the Indian child's parent, Indian custodian, or tribe or
18 when a petition under s. 48.133 involves an unborn child who, when born, may be an
19 Indian child and the person to be notified is the child's expectant mother or the
20 Indian tribe with which the unborn child may be eligible for membership when born,
21 the mail shall be sent so that it is received by the Indian child's parent, Indian
22 custodian, and tribe, by the unborn child's expectant mother and Indian tribe, or by
23 the U.S. secretary of interior at least 10 days before the time of the hearing.

24 **SECTION 58.** 48.299 (6) (d) of the statutes is amended to read:

1 48.299 (6) (d) The court may stay the proceedings under this chapter pending
2 the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court
3 determines that the paternity proceedings will not unduly delay the proceedings
4 under this chapter and the determination of paternity is necessary to the court's
5 disposition of the child if the child is found to be in need of protection or services or
6 if the court determines that the paternity proceedings may result in a finding that
7 the child is an Indian child and in a petition by the child's parent, Indian custodian,
8 or tribe for transfer of the proceeding to the jurisdiction of the tribe. ✓

History: 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; 1997 a. 35, 252, 292, 334; 1999 a. 32, 149.

9 **SECTION 59.** 48.299 (9) of the statutes is created to read:

10 48.299 (9) If at any point in the proceeding the court determines that the child
11 is or may be an Indian child or that the unborn child, when born, may be an Indian
12 child, the court shall provide notice of the proceeding to the child's parent, Indian
13 custodian, and tribe, or to the expectant mother and the Indian tribe in which the
14 unborn child may be eligible for membership when born, in the manner specified in
15 s. 48.273 (1) (ag). The next hearing in the proceeding may not be held until at least
16 10 days after receipt of the notice by the parent, Indian custodian, and tribe or by the
17 expectant mother and tribe. ✓ On request of the parent, Indian custodian, expectant
18 mother, or tribe, the court shall grant a continuance of up to 20 additional days to
19 enable the requester to prepare for that hearing. ✓

NOTE: At numerous places throughout ss. 48.30 to 48.31 the DHFS draft repeats essentially the same language requiring notice under 25 USC 1912 (a) to be provided to an Indian child's parent, Indian custodian, and tribe. ✓ Rather than unduly lengthen an already lengthy chapter by repeating essentially the same language over and over again, this draft consolidates that language into one section applicable throughout. ✓

20 **SECTION 60.** 48.30 (1) of the statutes is amended to read:

✓

1 48.30 (1) Except as provided in ~~this subsection~~ s. 48.299 (9), the hearing to
2 determine whether any party wishes to contest an allegation that the child or unborn
3 child is in need of protection or services shall take place on a date which allows
4 reasonable time for the parties to prepare but is within 30 days after the filing of a
5 petition for a child or an expectant mother who is not being held in secure custody
6 or within 10 days after the filing of a petition for a child who is being held in secure
7 custody.

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

8 **SECTION 61.** 48.30 (2) of the statutes is amended to read:

9 48.30 (2) At the commencement of the hearing under this section the child and
10 the parent, guardian ~~or~~ ✓ legal custodian, or Indian custodian ✓; the child expectant
11 mother, her parent, guardian ~~or~~ legal custodian, or Indian custodian, and the unborn
12 child through the unborn child's guardian ad litem; ✓ or the adult expectant mother
13 and the unborn child through the unborn child's guardian ad litem; ✓ shall be advised
14 of their rights as specified in s. 48.243 and shall be informed that a request for a jury
15 trial or for a substitution of judge under s. 48.29 must be made before the end of the
16 plea hearing or ~~be~~ ✓ is waived. Nonpetitioning parties, including the child, shall be
17 granted a continuance of the plea hearing if they wish to consult with an attorney
18 on the request for a jury trial or substitution of a judge.

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

19 **SECTION 62.** 48.30 (6) (a) of the statutes is amended to read:

✓

20 48.30 (6) (a) If a petition is not contested, the court, subject to s. 48.299 (9), shall
21 set a date for the dispositional hearing which allows reasonable time for the parties
22 to prepare but is no more than 10 days after the plea hearing for a child who is held
23 in secure custody and no more than 30 days after the plea hearing for a child or an

expectant mother who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing.

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

SECTION 63. 48.30 (7) of the statutes is amended to read:

48.30 (7) If the petition is contested, the court, subject to s. 48.299 (9), shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody.

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

SECTION 64. 48.305 of the statutes is amended to read:

48.305 Hearing upon the involuntary removal of a child or expectant mother. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court, subject to s. 48.299 (9), shall schedule a plea hearing and fact-finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent, guardian or expectant mother.

History: 1977 c. 354; 1979 c. 300; 1997 a. 292.

SECTION 65. 48.31 (1) of the statutes is amended to read:

48.31 (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate

1 parental rights are proved by clear and convincing evidence and, in the case of a
2 petition to terminate parental rights to an Indian child, to determine if it is proved
3 beyond a reasonable doubt, including the testimony of one or more qualified expert
4 witnesses, that the continued custody of the Indian child by the parent or Indian
5 custodian is likely to result in serious emotional or physical damage to the child and
6 if it is proved beyond a reasonable doubt that active efforts have been made to
7 prevent the breakup of the Indian family and that those efforts have proved
8 unsuccessful. ✓

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105; 2005 a. 42.

NOTE: ICWA is ambiguous as to whether both serious damage and active efforts must be proved beyond a reasonable doubt in order to TPR. In *In Re Interest of DSP*, 166 Wis. 2d 464 (1992), the Wisconsin Supreme Court held that both serious damage and active efforts must be proved beyond a reasonable doubt in order to TPR. ✓

9 **SECTION 66.** 48.31 (7) (a) of the statutes is amended to read: ✓

10 48.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
11 48.299 (9), shall set a date for the dispositional hearing which allows a reasonable
12 time for the parties to prepare but is no more than 10 days after the fact-finding
13 hearing for a child in secure custody and no more than 30 days after the fact-finding
14 hearing for a child or expectant mother who is not held in secure custody. If all parties
15 consent, the court may immediately proceed with a dispositional hearing.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105; 2005 a. 42.

16 **SECTION 67.** 48.315 (1) (j) of the statutes is created to read:

17 48.315 (1) (j) A reasonable period of delay, not to exceed 20 days, in a proceeding
18 involving the out-of-home care placement of or termination of parental rights to a
19 child who is or may be an Indian child, or involving an unborn child who, when born,
20 may be an Indian child, resulting from a continuance granted at the request of the
21 child's parent, Indian custodian, or tribe, or of the unborn child's expectant mother

1 or the Indian tribe in which unborn child may be eligible for membership when born,
2 to enable the requester to prepare for the proceeding.

NOTE: 25 USC 1912 (1) limits the continuance to prepare for a hearing to 20 days. ✓

3 **SECTION 68.** 48.315 (1m) of the statutes is amended to read:

4 48.315 (1m) Subsection (1) (a), (d), (e) and, (fm), (g), and (j) ✓ does not apply to
5 proceedings under s. 48.375 (7).

6 **History:** 1977 c. 354; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98; 1997 a. 292; 2001 a. 16, 109.

6 **SECTION 69.** 48.315 (2) of the statutes is amended to read:

7 48.315 (2) A continuance shall be granted by the court only upon a showing of
8 good cause in open court or during a telephone conference under s. 807.13 on the
9 record and only for so long as is necessary, taking into account the request or consent
10 of the district attorney or the parties, the request of a person specified in sub. (1) (j), ✓
11 and the interest of the public in the prompt disposition of cases.

12 **History:** 1977 c. 354; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98; 1997 a. 292; 2001 a. 16, 109.

12 **SECTION 70.** 48.32 (1) (c) 1. of the statutes is renumbered 48.32 (1) (c) and
13 amended to read:

14 48.32 (1) (c) If the judge or circuit court commissioner finds that any of the
15 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
16 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m) ✓
17 within 30 days after the date of that finding to determine the permanency plan for
18 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
19 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
20 ~~than 5 days before the date of the hearing.~~ ✓

21 **History:** 1977 c. 354; 1985 a. 311; 1987 a. 27, 285, 339; 1991 a. 24, 253, 315; 1993 a. 98; 1995 a. 24, 77, 448; 1997 a. 292; 1999 a. 149; 2001 a. 61, 109.

21 **SECTION 71.** 48.32 (1) (c) 2. of the statutes is repealed. ✓

22 **SECTION 72.** 48.32 (1) (c) 3. of the statutes is repealed. ✓

23 **SECTION 73.** 48.33 (4) (d) of the statutes is created to read:

1 48.33 (4) (d) If the agency knows or has reason to know that the child is an
2 Indian child, a description of any efforts undertaken to determine whether the child
3 is an Indian child, specific information showing that continued custody of the child
4 by the parent or Indian custodian is likely to result in serious emotional or physical
5 damage to the child, and specific information showing that the county department,
6 department, in a county having a population of 500,000 or more, or agency primarily
7 responsible for providing services to the child has made active efforts to prevent the
8 breakup of the Indian family and that those efforts have proved unsuccessful. ✓

NOTE: The DHFS draft requires the court report to set forth any response by the Indian tribe regarding the interest of the tribal court in exercising jurisdiction. ✓ Under 25 USC 1911 (b), however, the remedy for a tribe that wishes to exercise jurisdiction is not to express interest to the agency. ✓ Rather, the tribe's remedy is to petition for transfer of jurisdiction. Accordingly, this draft does not require a court report to set forth the tribe's interest in exercising jurisdiction. ✓

The DHFS draft also requires documentation that the placement preferences were followed. That documentation, however, is included in the permanency plan, which is already included in the court report under s. 48.33 (4) (a). Accordingly, this draft does not repeat that requirement in s. 48.33 (4). ✓ (N)

9 **SECTION 74.** 48.335 (3j) of the statutes is created to read:

10 48.335 (3j) At hearings under this section involving an Indian child, if the
11 agency, as defined in s. 48.38 (1) (a), is recommending placement of the Indian child
12 in a foster home, treatment foster home, group home, or residential care center for
13 children and youth or in the home of a relative other than a parent, the agency shall
14 present as evidence specific information showing all of the following: ✓

15 (a) That continued custody of the Indian child by the parent or Indian custodian
16 is likely to result in serious emotional or physical damage to the Indian child. ✓

17 (b) That the county department, the department, in a county having a
18 population of 500,000 or more, or the agency primarily responsible for providing
19 services to the Indian child has made active efforts to prevent the breakup of the
20 Indian family and that those efforts have proved unsuccessful. ✓